IN THE HIGH COURT OF DELHI AT NEW DELHI

**MAC. APP. No.913/2005**

# Master Saurabh Kumar ... Appellant
! through: Mr.A.K.Mishra, Adv.

VERSUS

$ Naresh Kumar & Ors. ... Respondents

^ through: Ms. Namrata Chopra, Adv. for R-4.

RESERVED ON : 09.05.2007

% **D**ATE OF DECISION: 15.05.2007

**CORAM:**

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

**: PRADEEP NANDRAJOG, J.**

1. On 9.1.2003, injured Master Saurabh sustained serious injuries in a road accident stated to be caused by the rash and negligent driving of the offending vehicle belonging to the respondent no.2, Dharam Vir and respondent no.3, Jogender Singh. Injured filed a claim petition under Section 166

read with Section 140 of the Motor Vehicles Act, 1988.

2. Vide award dated 16.8.2005, Tribunal has awarded compensation in sum of Rs.3,18,000/- to the injured. Break up of the compensation awarded is as follows:-

| | | |
|---|---|---|
| 1. | Loss of earning capacity: | Rs.1,80,000/- |
| 2. | Treatment expenses: | Rs.8,000/- |
| 3. | Conveyance expenses: | Rs.5,000/- |
| 4. | Special diet: | Rs.5,000/- |
| 5. | Loss of education: | Rs.10,000/- |
| 6. | Pain and suffering: | Rs.30,000/- |
| 7. | Loss of future enjoyment of life: | Rs.70,000/- |
| 8. | Loss of earning of father: | Rs.10,000/- |

3. Aggrieved by the amount of compensation awarded by the Tribunal, injured has filed the present appeal.

4. Since the only issue involved relates to quantum of compensation, I shall only be noting such facts as are relevant for adjudication of said issue.

5. Injured was aged 13 years as on the date of the accident. He was a student of Class VIII, Bright Star Public Middle School, Delhi.

6. On account of injuries sustained by the injured, his

right leg was amputated above the knee. Disability certificate, Ex.PW-1/X1 shows that permanent disability was assessed at 80%.

7. Discharge summary, Ex.PW-1/D1, shows that the injured was hospitalized at G.T.B.Hospital, Delhi for the period from 9.1.2003 to 24.6.2003 i.e. nearly 5 months.

8. In the light of aforenoted backdrop facts, I shall determine the 'fairness' of the compensation assessed by the Tribunal.

9. Broadly speaking, while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and non-pecuniary damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money. Whereas, non pecuniary damages are those which are incapable of being assessed by arithmetical calculations.

10. Pecuniary loss may include the following:-

(i) Special damages or pre-trial pecuniary loss.

(ii) Prospective loss of earnings and profits.

(iii) Medicinal expenses.

(iv) Cost of future care and other expenses.

11. Non pecuniary loss may include the following:-

(i) Pain and suffering.

(ii) Damages for mental and physical shock.

(iii) Loss of amenities of life which may include a variety of matters i.e. on account of injury the injured may not be able to walk, run or sit etc.

(iv) Loss of expectation of life i.e. on account of injury normal longevity of the life of the person concerned is shortened.

(v) Disfigurement.

(vi) Discomfort or inconvenience, hardship, disappointment, frustration and mental stress in life.

12. As noted herein above, damages have to be assessed separately as pecuniary damages and non pecuniary damages. In the instant case, Tribunal has awarded Rs.2,18,000/- under the head 'pecuniary damages' and Rs.1,00,000/- under the head 'non-pecuniary damages'. I shall deal with each head separately.

Non-pecuniary Damages:

13. Tribunal has awarded Rs.1,00,000/- under this head. Break-up of the compensation awarded under this head is as follows:-

(i) Pain and suffering : Rs.30,000/-

(ii) Loss of future enjoyment of life : Rs.70,000/-

14. Learned counsel for the appellant contended that compensation awarded by the Tribunal under this head is inadequate.

15. Noting the extent of the injury suffered by the appellant, his young age and the period for which he remained hospitalized, compensation of Rs.1,00,000/- awarded by the Tribunal under this head is on the lower side.

16. In so holding, I note the undermentioned judgments:-

"1. *B.N.Kumar Vs. DTC.* 118 (2005) DLT 36

2. *Fakirappa Vs. Yallawwa & Anr.* 2004 ACJ 141

3. *K.Shankran Vs. Pallavan Transport Corporation* 2001 ACJ 488

4. *M.Jagannathan Vs. Pallavan Transport Corporation* 1999 ACJ 366

5. *Bhagwan Singh Meena Vs. Jai Kishan Tiwari* 1999 ACJ 1200

6. *Dr. Gop Ramchandani Vs. Onkar Singh & Ors.* 1993 ACJ 577

7. *Jitendra Singh Vs. Islam* 1998 ACJ 1301

8. *Iranna Vs. Mohammadali Khadarsab Mulla & Anr.* 2004 ACJ 1396."

17. From the aforenoted judicial decisions, a trend which emerges is that between the years 1985 to 2000, courts have been awarding about Rs.3 lac under the head 'non pecuniary damages' for amputation of leg resulting in permanent disability of 50% and above.

18. In the instant case, Tribunal has awarded Rs.1 lac under the head 'non pecuniary damages'. Accordingly, I award Rs.3 lacs under the head 'non pecuniary damages'. Thus, compensation under the said head is enhanced by a further sum of Rs.2 lacs.

Pecuniary damages:

19. Tribunal has awarded Rs.2,18,000/- under the head 'non-pecuniary damages'. Learned counsel for the appellant has challenged the award on one count. One, compensation

awarded by the Tribunal for loss of earning capacity is on the lower side. Tribunal has erred in awarding no compensation for the future medical expenses.

20. Tribunal has awarded Rs.1,80,000/- to the injured for the loss of earning capacity.

21. Tribunal has assessed damages for loss of earning capacity by applying multiplier method.

22. Noting IInd Schedule appended to the MV Act 1988 which provides notional income of Rs.15,000/- per annum in case of non earnings persons, learned Tribunal has taken income of the deceased as Rs.15,000/- per annum.

23. Considering that the injured was 13 years at the time of the accident, Tribunal has applied multiplier of 15 as provided under IInd Schedule.

24. Admittedly, injured had suffered 80% permanent disability. Tribunal has taken functional disability suffered by the injured as 80%. Thus, total compensation is determined by the Tribunal as Rs.15,000 X 15 X 80% = Rs.1,80,000/-.

25. In my opinion, Tribunal has erred in assessing functional disability suffered by the injured at 80%.

26. While estimating future loss of income, the effect of

the earning capacity ought to be judged in the light of the importance of the loss of permanently impaired limb in the vocation or profession or employment career of the injured person. The nature of work or business has to be considered and the extent of disablement cannot be indifferent to the nature of the work.

27. In the instant case, injured was a student of class VIII. What would have been his avocation in future cannot be determined at this stage. However, report card of the injured of Class VII (Ex.PW-1/H) throw some light on the same. The said report card shows that injured was a brilliant child as evident from the fact that he obtained 88.6% marks in Class VII. In all probability, it can be assumed that deceased would have taken up a white collar job in future and not a manual job. Thus, in any case, functional disability suffered by him cannot exceed 50%.

28. Therefore, I see no infirmity in decision of Tribunal in awarding Rs.1,80,000/- to the injured for the loss of earning capacity.

29. In view of para 19 above, net effect is that compensation stands enhanced by a sum of Rs.2,00,000/-.

33. Appeal stands disposed of by enhancing the compensation by a further sum of Rs.2,00,000/-.

34. Enhanced compensation shall be paid together with interest @ 6% per annum from date of claim petition till date of realization.

35. I direct that the enhanced compensation be kept in a fixed deposit with a Nationalized Bank or a Post Office Scheme whichever secures maximum interest for a period of 5 years.

36. No costs.

May 15, 2007 PRADEEP NANDRAJOG, J.
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